



[4337-15-P]

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[189D0102DR/DS5A300000/DR.5A311.IA000118]

25 CFR Part 273

RIN 1076-AF24

Education Contracts under Johnson-O'Malley Act

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would update one section of the regulation regarding when Indian students are eligible for benefits of education contracts under the Johnson-O'Malley Act (JOM), to codify past practice and a Federal District Court ruling by deleting the requirement that the Indian student must have $\frac{1}{4}$ or more degree of Indian blood.

DATES: Please submit comments by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments by any of the following methods:

You may submit comments by any of the following methods:

- Federal rulemaking portal: <http://www.regulations.gov>. The rule is listed under the agency name "Bureau of Indian Affairs."

- E-mail: comments@bia.gov. Include the number 1076-AF24 in the subject line of the message.

- Mail: Elizabeth Appel, Office of Regulatory Affairs & Collaborative Action,
U.S. Department of the Interior, 1849 C Street, N.W., MIB-4660-MS, Washington, DC
20240. Include the number 1076-AF24 in the subject line of the message.

- Hand delivery: Elizabeth Appel, Office of Regulatory Affairs & Collaborative
Action, U.S. Department of the Interior, 1849 C Street, N.W., MS 4660, Washington, DC
20240. Include the number 1076-AF24 in the subject line of the message.

We cannot ensure that comments received after the close of the comment period
(see DATES) will be included in the docket for this rulemaking and considered.

Comments sent to an address other than those listed above will not be included in the
docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Elizabeth Appel, Director, Office of
Regulatory Affairs & Collaborative Action, (202) 273-4680; elizabeth.appel@bia.gov.

SUPPLEMENTARY INFORMATION:

- I. Summary of Rule
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 - B. Regulatory Flexibility Act
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 - D. Unfunded Mandates Reform Act
 - E. Takings (E.O. 12630)
 - F. Federalism (E.O. 13132)
 - G. Civil Justice Reform (E.O. 12988)
 - H. Consultation with Indian Tribes (E.O. 13175)
 - I. Paperwork Reduction Act
 - J. National Environmental Policy Act
 - K. Effects on the Energy Supply (E.O. 13211)
 - L. Clarity of this Regulation
 - M. Public Availability of Comments

I. Summary of Rule

This rule would revise a section of the regulations governing education contracts under the JOM. The JOM authorizes the Secretary of the Interior to enter into contracts with States, schools, and private organizations, and to expend appropriated funds in support of Indian students under those contracts. *See*, 25 U.S.C. 254. The regulations at 25 CFR part 273 implement this authority.

This rule would revise section 273.12 of the regulations to correctly reflect the requirements for students eligible for JOM funding. Currently, the regulations state that Indian students are eligible for benefits of a JOM contract if they are of $\frac{1}{4}$ or more degree Indian blood and are recognized by the Secretary as being eligible for Bureau services. Prior to the 1990's, the Department implemented this regulation to require $\frac{1}{4}$ or more degree Indian blood. In 1990, the United States District Court for the District of Nevada stated that this regulatory requirement was too restrictive. *See, Nevada Urban Indians, Inc. v. United States*, CV-N-90-238 BRT (September 12, 1990). Since that Court ruling, the Department has implemented this regulatory provision as requiring only membership in a federally recognized Tribe. The Department does not require a certain degree of Indian blood. As such, this rule would delete the requirement for a blood degree quantum. With this deletion, the rule codifies both the Court ruling and past practice.

II. Procedural Requirements

A. Regulatory Planning and Review (E.O. 12866, 13563, and 13771)

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The E.O. directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements. This rule is also part of the Department's commitment under the Executive Order to reduce the number and burden of regulations. .

E.O. 13771 of January 30, 2017, directs Federal agencies to reduce the regulatory burden on regulated entities and control regulatory costs. E.O. 13771, however, applies only to significant regulatory actions, as defined in Section 3(f) of E.O. 12866. Therefore, E.O. 13771 does not apply to this proposed rule.

B. Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

C. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(a) Does not have an annual effect on the economy of \$100 million or more because it merely codifies eligibility requirements that were already established by past practice and a Federal District Court ruling.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions because this rule affects only individuals' eligibility for certain education contracts.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises because this rule affects only individuals' eligibility for certain education contracts.

D. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.) is not required.

E. Takings (E.O. 12630)

This rule does not affect a taking of private property or otherwise have taking implications under Executive Order 12630 because this rule does not affect individual property rights protected by the Fifth Amendment or involve a compensable "taking." A takings implication assessment is not required.

F. Federalism (E.O. 13132)

Under the criteria in section 1 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement because the rule affects only individuals' eligibility under certain education contracts. A federalism summary impact statement is not required.

G. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule: (a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and (b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

H. Consultation with Indian Tribes (E.O. 13175)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have determined that it has no substantial direct effects on federally recognized Indian Tribes and that consultation under the Department's Tribal consultation policy is not required because the eligibility requirements established in this rule are already in effect and have been in effect for many years.

I. Paperwork Reduction Act

This rule does not contain any information collection requirements, and a

submission to the Office of Management and Budget under the Paperwork Reduction Act is not required.

J. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because this is an administrative and procedural regulation. (For further information see 43 CFR 46.210(i)). We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

K. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

L. Clarity of this Regulation

We are required by Executive Orders 12866 (section 1(b)(12)), and 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- a) Be logically organized;
- b) Use the active voice to address readers directly;
- c) Use clear language rather than jargon;
- d) Be divided into short sections and sentences; and,
- e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the "ADDRESSES" section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you believe lists or tables would be useful, etc.

M. Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment – including your personal identifying information – may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

List of Subjects in 25 CFR Part 273

Government contracts, Indians-education, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Department of the Interior, Bureau of Indian Affairs, proposes to amend part 273 in Title 25 of the Code of Federal Regulations as follows:

PART 273—EDUCATION CONTRACTS UNDER JOHNSON-O’MALLEY ACT

1. The authority citation for part 273 continues to read as follows:

AUTHORITY: Secs. 201-203, Pub. L. 93-638, 88 Stat. 2203, 2213-2214 (25 U.S.C. 455-457), unless otherwise noted.

2. Revise § 273.12 to read as follows:

§ 273.12 Eligible students.

Indian students, from age 3 years through grade(s) 12, except those who are enrolled in Bureau or sectarian operated schools, shall be eligible for benefits provided by a contract pursuant to this part if they are recognized by the Secretary as being eligible for Bureau services. Priority shall be given to contracts:

(a) Which would serve Indian students on or near reservations; and

(b) Where a majority of such Indian students will be members of the Tribe(s) of such reservations (as defined in § 273.2(o)).

Dated: February 27, 2018

John Tahsuda,

Principal Deputy Assistant Secretary – Indian Affairs,

Exercising the Authority of the Assistant Secretary – Indian Affairs.

[FR Doc. 2018-05749 Filed: 3/20/2018 8:45 am; Publication Date: 3/21/2018]